

Service Date: December 15, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Joint Application of	)	
Qwest Communications Corporation, <u>et al.</u> , and	)	UTILITY DIVISION
U S WEST Communications, Inc., <u>et al.</u> , for	)	
Approval of the Merger of Parent Corporations,	)	DOCKET NO. D99.8.200
U S WEST, Inc. and Qwest Communications	)	
International Inc.	)	ORDER NO. 6199b

**ORDER COMPELLING DISCOVERY RESPONSES AND SUMMARY**

**BACKGROUND**

1. The Montana Public Service Commission (Commission) issued its Procedural Order in this Docket, Order No. 6199, on October 6, 1999. At the request of Joint Applicants U S WEST, Inc., and Qwest Communications Corporation (Qwest) the Commission issued a Protective Order, Order No. 6199a on November 17, 1999, separately providing protection for two kinds of information. "Proprietary Information" would be given to Commission Staff and Intervenor under the customary Protective Order requirements provided; and "Competitive Information" would be provided to Commission Staff and Montana Consumer Counsel (MCC) Staff only, under special protection provided in the Protective Order.

2. As a result of Applicants' delays in submitting the responses to data requests, on or about November 23, 1999, Intervenor McLeodUSA Telecommunications Services, Inc., (McLeod) and MCC contacted the Commission and its staff, requesting additional time to file objections and motions to compel discovery responses.

3. On November 24, 1999, Intervenor AT&T Communications of the Mountain States, Inc. (AT&T) filed a Motion for Reconsideration of Order No. 6199a (Protective Order), as well as motions to compel discovery responses and a request for extension of time on discovery. As did McLeod and MCC, AT&T alleged in part that discovery responses from the Applicants were late, incomplete or evasive.

4. By Commission delegation to Staff, the provisions for filing discovery objections

included in Order No. 6199 ¶ 12 (Procedural Order), were suspended until further notice. (Notice of Staff Action, issued November 24, 1999).

5. On November 29, 1999, Joint Applicants filed a Joint Motion for Leave to File Responses to Pending Motions of AT&T Communications.

6. On November 30, 1999, MCC filed Objections to Data Responses, Motion to Compel, Motion for Further Time in Which to Object, and Motion to Amend Procedural Schedule.

7. At a duly noticed work session on November 30, 1999, the Commission suspended the Procedural Schedule in Procedural Order, Order No. 6199, ¶ 2, as amended by Staff Action (Notice of Staff Action Amending Procedural Schedule, issued November 15, 1999). The Commission vacated the hearing date of January 26, 2000, to be rescheduled at a work session during the week of December 13, 1999. The Commission directed Applicants to file briefs in response to the pending motions and brief of AT&T, as well as the motions of McLeod and MCC, on or before 5:00 p.m., December 8, 1999, with reply briefs due from the Intervenors on or before noon, December 13, 1999.

8. Joint Applicants filed their Joint Opposition to AT&T's and McLeodUSA's Motions for Reconsideration of the Commission's Protective Order at 4:53 p.m. on December 8, 1999. (Intervenors have alleged that they did not receive the document until late December 9, 1999.) At the same time, Joint Applicants filed their Joint Response to AT&T's Motion to Compel and Motion for an Extension of Time to File Direct Testimony.

9. McLeod filed a Motion to Compel Discovery Responses on December 10, 1999. At the same time, McLeod filed its Reply to Applicants' Opposition to Motion for Reconsideration of Protective Order.

10. MCC filed a Reply Regarding MCC Objections to Data Responses on December 13, 1999, supplementing its Motion to Compel with discussion of the Joint Applicants' particular issue related to the Hart- Scott-Rodino Antitrust Improvements Act raised after initial Commission actions on discovery overruling Joint Applicants' previous objections not raising the issue.

11. At its work session on December 14, 1999, the Commission granted all the outstanding Motions to Compel in general, and in particular overruled the Joint Applicants'

objections to MCC's requests that were based on the Hart-Scott-Rodino Act. The Commission directed Joint Applicants to file complete discovery responses on or before January 3, 2000 to those requests covered by the routine provisions of the Protective Order, as well as those responses that are not proprietary. The Commission directed Joint Applicants to file a non-confidential summary of the Competitive Information by December 20, 1999. The Commission also directed Joint Applicants to file a statement detailing what other states in the western region are doing to protect this information. The Commission deferred action on the Motions for Reconsideration of the Protective Order until after receiving this summary from Joint Applicants.

#### FINDINGS OF FACT AND DISCUSSION

12. The Commission finds that the Motions to Compel discovery responses are well taken. The Commission previously addressed most of the substance of Joint Applicants' objections and issued a Notice of Commission Action on November 5, 1999. If Joint Applicants wish to expedite the proceedings, there should not be so many delays and objections.

13. The Commission previously addressed the particular objections to MCC's data responses, as well, and disposed of them in the Notice of Commission Action issued November 5. To have the objections raised again with a half-hearted claim of exemption from disclosure under the Hart-Scott-Rodino Act does not comport with the obligation of Joint Applicants to provide MCC with the information to fulfill its constitutional obligations. Further, the Commission requires necessary information to make its determinations on this application. The appropriate protections are provided under the Protective Order, as dictated by the Montana Supreme Court in *MT'N States Tele. V. Dept. of Pub. Serv. Reg.*, 194 Mont. 277, 634 P.2d 181 (1981). The Hart-Scott-Rodino Act has the purpose of protecting certain information maintained by the Federal Government from access by the public under the Freedom of Information Act. Likewise, the public is prevented access to this information by the Protective Order, while the necessary parties and the Commission have access under the protections provided by Montana law.

14. The Commission finds that it needs additional information on the issue of whether the special provisions of the Competitive Information are necessary and/or legally appropriate. This statement should address whether potentially competing intervenors in other states have access to Competitive Information and what are the terms and conditions of the respective regulatory

Commissions', consumer representatives' and competing intervenors' access in those states.

### CONCLUSIONS OF LAW

1. The Montana Public Service Commission (Commission) has jurisdiction over the parties in this proceeding pursuant to Title 69, Chapter 3, Montana Code Annotated (MCA). The Commission is invested with full power of supervision, regulation and control of public utilities, as provided in this chapter. § 69-3-102, MCA.

2. In addition to the modes of procedure prescribed in particular cases, the Commission has the power to regulate the mode and manner of all investigations and hearing of public utilities and other parties before it. § 69-3-103, MCA.

3. The Commission has the duty to balance the public's constitutional right to know and to have access to the public documents with the constitutional rights to privacy, equal protection and protection of property rights of parties before the Commission. In 1981, the Montana Supreme Court established the legal requirements for this balancing of constitutional interests by providing the framework for a protective order. The Supreme Court stated that this protective order would allow the Commission and the MCC to perform their statutory and/or constitutional duties and would allow parties with an interest in the proceedings to have access to confidential information. *The Mountain States Telephone and Telegraph Company, et al., v. the Department of Public Service Regulation*, 194 Mont. 277, 634 P.2d 181 (1981).

### ORDER

WHEREFORE, the Commission hereby orders Joint Applicants to file complete discovery responses on or before January 3, 2000 to those requests covered by the routine provisions of the Protective Order, as well as those responses that are not proprietary. The Commission directs Joint Applicants to file a non-confidential summary of the Competitive Information by December 20, 1999. The Commission also directs Joint Applicants to file a statement detailing what other states in the western region are doing to protect this information. The Commission defers action on the Motions for Reconsideration of the Protective Order.

DONE AND DATED this 14th day of December, 1999, by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chairman

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NANCY MCCAFFREE, Vice Chair

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GARY FELAND, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.